Muzakarah
on Failure Resolution of Islamic Financial Institutions

Session 1

Transferability of Investment Accounts

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Introduction

- Bank Negara Malaysia (BNM) continued efforts to enhance the role and contribution of Islamic finance in supporting socio-economic developments in Malaysia.
- Despite steady growth in Islamic finance (42% market share; 6% annual growth), Investment Accounts (IAs) remain underutilised, accounting for only 14% of total Islamic deposits and IAs in 2023.
- Lack of clear procedures and guidance for seamless transfer of IAs between banks.
- No established Sharīʿah-compliant mechanism for IA transfers during bank distress or insolvency.
- Current research and regulation largely focus on IA structure and framework, with limited attention to IA transferability.
- The present study aims to develop Sharīʿah-compliant mechanisms for the transfer of investment accounts during business-as-usual operations in Islamic banks.

Research Objectives

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1. To assess the current features of investment accounts and their possible transferability.
2. To propose Shariah-compliant mechanisms to transfer investment accounts in a business-as-usual situation.

Research Methodology

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Secondary Data

Library Research

Focus Group Discussion (FGD)

- 12 participants (Islamic banks, regulatory authorities, Shariah scholars and academia)
- 11 July 2025 at IBIS Kuala Lumpur City Centre

Primary Data

Investment Account (IA) in Malaysia

Historical Development	IA under PIDM	Types of IA	IA Scheme
Key Features of IA	IA Contracts	Principles of IA	Examples of IAs

Historical Development of Investment Account (IA)

Before IFSA 2013 (under IBA 1983)

All funds classified as *Islamic deposits* regardless of contracts.

Main contracts used:

- **Qarḍ** – benevolent loan, bank guarantees repayment.
- **Wadīʿah yad ḍamānah** – safekeeping with guarantee.
- **Muḍārabah** – profit-sharing, loss borne by depositor.

After IFSA 2013 (effective 30 June 2013)

Clear **distinction** introduced:

- **Islamic Deposits** – guaranteed, based on qarḍ/wadīʿah.
- **Investment Accounts (IA)** – non-guaranteed, based on muḍārabah, mushārakah, or wakālah.
- Strengthened regulatory oversight by BNM, ensuring clarity between deposits and investments.

Differences of Investment Account (IA) and Islamic Deposit

DIFFERENCES	INVESTMENT ACCOUNT	ISLAMIC DEPOSIT
Customer's need	Partnership/investment agent	Safekeeping
Contractual relationship	Investor (You) & entrepreneur (your Islamic bank)	Customer (You) & Custodian (your Islamic bank)
Transaction structure	Fund is managed by Islamic bank for investment in shariah compliant assets	Deposit is placed with custodi For safe keeping
Profit distributin	Profit sharing rate	Custodian's discretion
Shariah contracts	• Mudharabah (profit sharing) • Musyarakah (profit and loan • sharing) • Wakalah (agency)	• Wadiah (safekeeping) • Qard (benevolent loan) • Tawarruq (commodity safe)

Source: Bank Negara Malaysia (n.d.)

Types of Investment Account (IA)

Unrestricted Investment Account (UIA)

Restricted Investment Account (RIA)

Features of Investment Account (IA)

UNIQUE
Exclusively offered by Islamic banks

CHOICE
Invest in economic sector of your interest

BANK IS YOUR PARTNER
Your investment is professionally managed by the Islamic banks

PROFIT SHARING
Return on investment will be shared with you as the investor

RISK-REWAD PRINCIPLES
It is not a deposit, thus not protected under Perbadanan Insurans Deposit Malaysia (PIDM)

Specific features of investment account depends on the contract used in the offering:

i. **Mudharabah** (profit sharing and loss bearing)
ii. **Musyarakah** (profit and loss sharing)
iii. **Wakalah** (agency agreement)

Source: Bank Negara Malaysia (2014)

Is the Management of an Investment Account a Right (Ḥaqq) or a Liability (Dzimmah)?

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Nature of Contract

- Trust-based
- Investors (IAH) entrust funds to Islamic bank.
- Based on muḍārabah, mushārakah, or wakālah bi al-istithmār.

Liability Aspect

- Bank is not obliged to guarantee or repay capital, except in cases of misconduct, negligence or breach of terms.
- Unlike wadi'ah yad ḍamānah or qard, which create full liability.

Right Aspect

- Bank gains right to manage funds and earn agreed profit share.
- Bank is entrusted with control and authority.

Investment Account under Malaysian Law

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👉 Section 2 IFSA 2013 (Interpretation):

- *"investment account" means an account under which money is paid and accepted for the purposes of investment, including under Shariah contracts such as mudarabah, musharakah, wakalah or any other Shariah contracts, in which the risk of investment is borne by the investor, and in respect of which **the investor has no legal right to demand repayment in full of the sum invested**."*

👉 Key element: **Risk borne by investor, no legal liability to full repayment**
→ this implies that IA is not *dzimmah* (liability).

Comparison between Right (Haqq) and Liability (Dzimmah)

Aspect	Haqq (Right)	Dzimmah (Liability)
Definition	Entitlement or benefit recognized by Shariah	Responsibility or obligation by Shariah
Nature	Positive claim	Negative burden
Source	Derived from contracts, inheritance, possession, judicial court (*qada'*).	Arises from contracts, debts, guarantees, violations, or Sharīʽah obligations.
Effect	Grants control, benefit, or authority (e.g., right to profits, right to use property).	Imposes a duty to settle, fulfill, or compensate (e.g., paying debt, delivering goods)
Examples	Right to ownership (ḥaqq al-milkiyyah), right to profit (ḥaqq al-ribḥ), right to use (ḥaqq al-intifāʽ).	Obligation to repay a qarḍ, duty to deliver salam asset, liability to pay diyah (blood money).

Right (Haqq) vs Investment Account

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Features of Rights (Haqq)	Investment Account	Remarks
Entitlement or benefit recognized by Shariah	☑	Entitlement to manage or to share a profit or to enjoy a fee.
Positive claim	☑	Islamic bank is entitled to claim for a compensation in the form of pre-agreed fee or profit-sharing ratio
Control and authority	☑	Islamic is given authority or control to manage investment account
Derived from contracts, inheritance, possession, judicial court (*qada'*).	☑	The right of managing IAs is derived from Shariah contracts of mudharabah, wakalah or musyarakah
Restriction of right	☑	Investment account can be restricted (RIA) and unrestricted (URIA)
Can be Owned and Transferred	☑	Management of Investment account can be owned and transferred to another party

Liability (Dzimmah) vs Investment Account

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Features of Liability (Dzimmah)	Investment Account	Remarks
Represents a debt obligation owed by one party to another	✗	Not a debt obligation because the Islamic bank is not held liable to repay the full capital.
Capital is guaranteed	✗	Capital is not guaranteed, unless loss is due to negligence, misconduct, or breach of contract by the bank
Obligation to return full capital at maturity	✗	Islamic bank does not necessarily return full capital, depending on market value.
Not affected by loss in capital	✗	Affected by loss in capital
Return is fixed or predetermined	✗	Return is variable, based on profit-sharing ratio agreed upfront
Transferability and Waiver of Liability	✓	IA can be transferred and can be waived

Types of Rights and Their Relation to Investment Account

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- **Rights (Huquq)**
  - **Holder of Right**
    - (Right of Allah/Public Right)
    - Right al-Adami (Individual Right)
    - Mixed Rights
  - **Subject Matter**
    - Financial Right
    - Non-Financial Right
  - **Transferability**
    - Transferable Right
    - Non-Transferable Right
  - **Enforceability**
    - Established Right (Muhaqqaq)
    - Potential Right (Mutawaqqa')
  - **In Relation to the Holder**
    - Personal Right
    - Property Right
    - Intangible Right
  - **Acquisition Mechanism**
    - Judicial Right (Haqq Qada'i)
    - Non-Judicial Right
  - **Establishment of the right in its subject matter**
    - Abstract right (haqq mujarrad)
      - Intangible usage rights
      - Priority right (haqq al-asbaqiyah)
      - Contractual rights (Haqq al-'aqd)
    - Non-abstract right

The management of an investment account can be classified as a contractual right under *ḥaqq al-mujarrad*

Transfer Mechanisms for the Rights (Ḥuqūq) in Islam

Transfer Mechanism

- Ijbari (Mandatory)
  - Inheritance
  - Judicial Ruling (Qada')
- Ikhtiyari (Voluntary)
  - Contracts
  - Waiver of Right (Isqat)

Possible Transfer Mechanisms for Investment Accounts (IAs)

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Faskhul 'aqd (tandid)

- Contract termination / new contract between IAH & Acquiring Bank
- Deemed consent?

Tanazul

- Release of the right over the management of IA by transferring it to the acquiring bank.
- Does the bank remain responsible for the investment?
- The issue of tanazul haqq bi iwad (imposing fee in tanazul)

Al-Muḍārib Yudarib/ al-Wakil Yuwakkil

- Transferor bank become liable?
- The mechanism does not relinquish the responsibility of the first mudarib/wakil

Hawalah

- Can an IA be classified as *dayn* (debt/receivable), thereby qualifying as a subject matter of *ḥawālah*?

Bai' (Sale)

- Majority of Shariah scholars did not allow the imposition of consideration ('iwad) by way of sale

FGD Results

Transferability of Investment Account

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- Transferring an investment account is possible during Business As Usual (BAU) and in failure resolution scenarios. However, they are questioning the potential benefits of this feature in a scenario where business operations continue as usual.
- Under normal circumstances, the transferability feature of investment accounts may not be commercially viable.
- FGD highlighted three primary situations where such a transfer is considered possible:
  1. Prior Mergers and Acquisitions
  2. During mergers and acquisitions
  3. Failure resolution.

FGD Results

Shariah Mechanisms for the Transfer of IAs

Tanazul Haqqil Mujarrad

- Waiving the right to manage the investment portfolio
- The right to manage a *muḍārabah* portfolio possesses inherent "value" (*qimah*), possible to transfer with consideration/fee.
- The fee in tanazul can also be justified as an introducer fee based on the concept of *ju'alah*.

Tandid (Dissolution/Liquidation)

- Most feasible mechanism, but not ideal solution
- No-compensation

FGD Results

Shariah Mechanisms for the Transfer of IAs

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Hawalah

- All participants agreed that ḥawālah is not suitable, as it is primarily used for transferring obligations or rights arising from debts.

Al-Muḍārib Yudarib/Al-Wakil Yuwakkil

- This mechanism is not preferred by the participants because it does not relinquish the responsibility of the original mudarib/wakil

Bay' Dayn bi al-Sila'

- Bay' ad-dayn bi sila' for restricted account
- Impractical, as it would result in Investment Account Holders (IAHs) losing ownership of their accounts

Preliminary Finding

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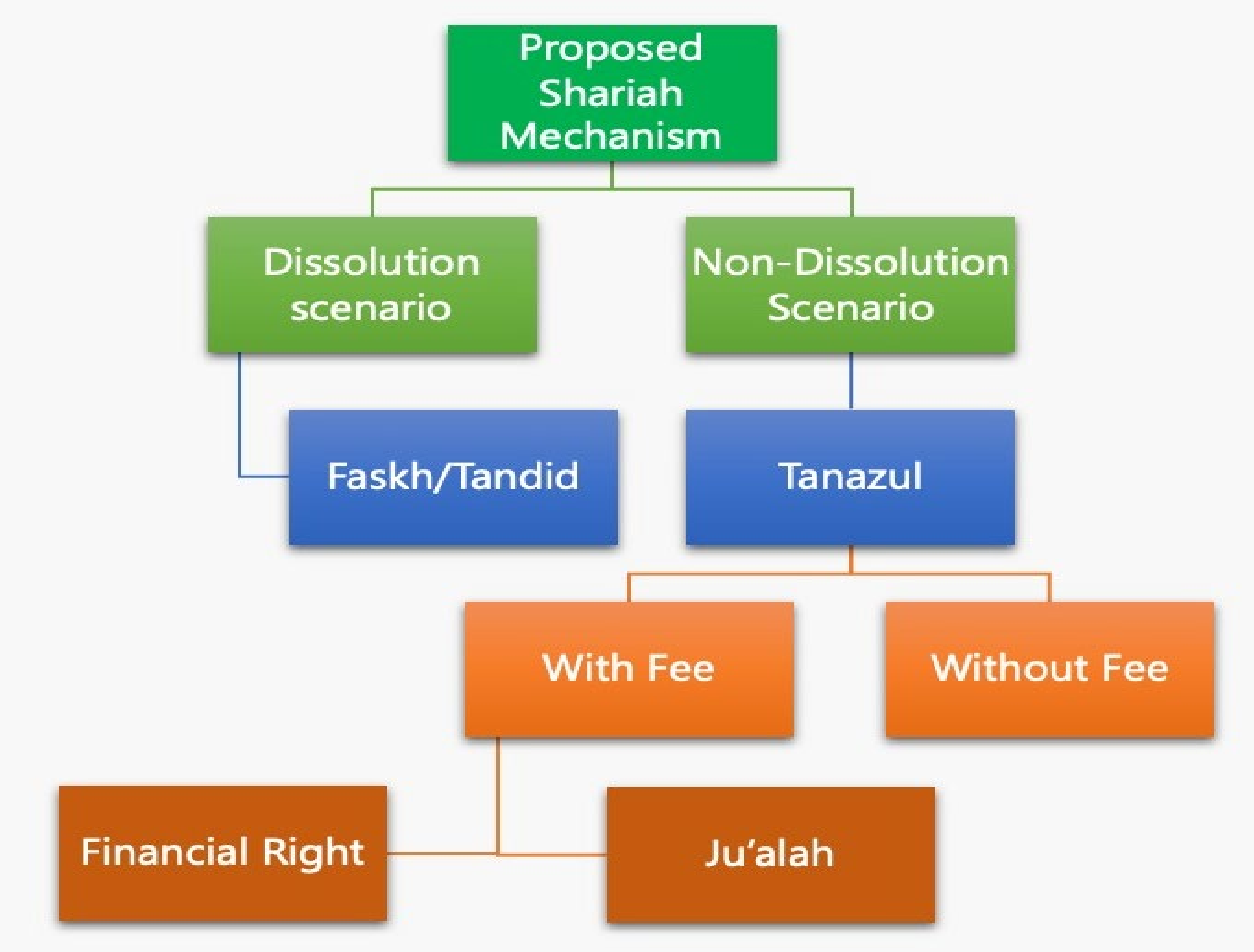
Proposed Shariah Mechanisms for the Transfer of IAs



Conclusion

- The transferability of investment accounts, whether Restricted Accounts (RA) or Unrestricted Accounts (UA) in a business-as-usual situation, is imperative in strengthening the operational flexibility and market development of Islamic banks in Malaysia. However, such transfers must be executed in strict adherence to Shariah principles and contractual integrity.
- For Unrestricted Accounts (UA), two primary transfer scenarios are identified:

1. **Dissolution Scenario**. The dissolution scenario employs mechanisms like *tandid* (liquidation) or *faskh al-'aqd* (contract termination). These allow for the termination of the muḍārabah or wakālah contract, returning funds to the investor. Although this approach does not raise any Shariah concerns, its practical implementation may face limitations. Additionally, as investment accounts are non-binding in nature, no penalties should be imposed upon unilateral termination,. Where deemed consent is applied, it must meet clear Shariah parameters, including prior understanding and no harm to contracting parties.

Conclusion

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2. Non-Dissolution Scenario.

- This scenario involves the application of *tanāzul haqq al-aqd* (waiver of a contractual right), allowing the transferring bank to relinquish its right to manage the funds.
- The transfer may be done with or without compensation (*'iwad*). This is because the right to manage a muḍārabah/wakalah portfolio possesses inherent "value" (qimah), possible to transfer with consideration/fee.
- The compensation may also be justified based on *ju'ālah,* where the outgoing bank acts as a referrer/introducer, introducing the acquiring bank to the IAH.

▪ For Restricted Accounts (RA), in addition to the above mechanisms, *bay' dayn bi sila'* (sale of receivables with an asset) is also proposed. However, this approach may be impractical, as it would result in Investment Account Holders (IAHs) losing ownership of their accounts once the *bayʿ al-dayn bi-silʿah* transaction is executed.

▪ While transfers during normal business operations (BAU) are uncommon, they become relevant in specific contexts, such as:

- merger and acquisition (M&A) planning;
- execution of mergers or acquisitions; and
- failure resolution scenarios.

Thank You